FILED
United States Court of Appeals
Tenth Circuit

June 9, 2016

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: LAMONT T. DRAYTON,

Petitioner.

No. 16-3125
(D.C. Nos. 2:12-CV-02568-KHV &
2:10-CR-20018-KHV-1)
(D. Kan.)

ORDER

Before **BRISCOE**, **PHILLIPS**, and **MORITZ**, Circuit Judges.

Lamont T. Drayton pleaded guilty in 2011 to possession of a firearm in furtherance of a federal drug trafficking crime, in violation of 18 U.S.C. 924(c), and conspiracy to maintain drug-involved premises within 1,000 feet of a public elementary school, in violation of 21 U.S.C. §§ 846, 856, 860(a), and 18 U.S.C. § 2. He seeks authorization to file a second or successive 28 U.S.C. § 2255 motion challenging these convictions as contrary to *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551 (2015). We deny the motion.

Johnson voided, in part, the definition of qualifying "violent felonies" used for sentence enhancement under the Armed Career Criminal Act (ACCA). *Johnson* held that a "residual clause" in the definition—covering any crime "involv[ing] conduct that presents a serious potential risk of physical injury to another," 18 U.S.C. § 924(e)(2)(B)(ii)—violated the constitutional prohibition against vague criminal laws. *Johnson*, 135 S. Ct. at 2563. The Supreme Court made *Johnson*'s holding retroactive to

cases on collateral review in *Welch v. United States*, ___ U.S. ___, 136 S. Ct. 1257, 1265 (2016).

To obtain authorization, Drayton must make a prima facie showing that his proposed § 2255 motion relies on "(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the [challenged] offense," or "(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h); *see also id.* § 2244(b)(3)(C). He invokes the second prong, pointing to *Johnson*'s holding striking down the residual clause in the ACCA. But the requirements of § 2255(h)(2) are not satisfied by the mere citation of a new rule of law in the abstract. The rule of law must actually be the basis of the claim for which authorization is sought. *In re Encinias*, ___ F.3d ___, No. 16-8038, 2016 WL 1719323, at *1 n.2 (10th Cir. Apr. 29, 2016) (per curiam). Accordingly, we must assess whether a new rule of law invoked by a prisoner has a sufficient connection to his case.

Here we conclude that Drayton has not demonstrated the requisite connection between his proposed claim and the new rule established in *Johnson*. Section 924(c) dictates a minimum five-year sentence for any person who possesses a firearm "during and in relation to" and "in furtherance of" a drug trafficking crime. 18 U.S.C. § 924(c)(1)(A)(i). Drayton contends that this language in § 924(c) is unconstitutionally overbroad and failed to provide fair notice of the specific prohibited conduct charged under §§ 856 and 860(a). Thus, his proposed claim does not involve the statutory

language invalidated in *Johnson*, and it is not in any way *based on* the holding in *Johnson* that invalidated the residual clause of the definition of "violent felony" in the ACCA.

Drayton's motion for authorization is denied. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

ELISABETH A. SHUMAKER, Clerk